

After reviewing the preliminary hearing record and considering the brief of the respondent, the Appeals Board finds as follows:

(1) Claimant started working for the respondent on December 20, 1996, sanding and finishing plastic parts. Claimant testified her job produced resin dust and her workplace was not ventilated. Claimant first sought medical treatment for what she thought was a cold on December 30, 1996. At that time, she started wearing a mask provided by the respondent because of the dusty work environment.

However, claimant's condition worsened to the point that her breathing became so labored that she was taken to the emergency room and then hospitalized at the Salina Regional Health Center on February 13, 1997.

While claimant was hospitalized, she was seen by Carolyn A. Hofer, M.D., a pulmonologist. At the time of the preliminary hearing held on September 10, 1997, claimant remained under Dr. Hofer's care. Claimant was hospitalized from February 13, 1997, until discharged on February 23, 1997. Dr. Hofer's medical records were admitted into evidence at the preliminary hearing. Dr. Hofer's diagnosis contained in claimant's discharge summary was reactive airway disease with exacerbation. The doctor also opined in the medical record that since the patient never had any asthma symptoms prior to her employment with respondent that it is assumed that claimant's condition is occupationally related. Dr. Hofer's medical records, that summarize her treatment of claimant following the hospitalization, characterized claimant's diagnosis as occupational asthma with exacerbation. In a letter to respondent's insurance carrier dated April 7, 1997, Dr. Hofer opined that there was a causal relationship between claimant's employment with respondent and claimant's present pulmonary illness.

Respondent argues claimant has failed to prove that her pulmonary illness is causally related to her working environment while employed by respondent. The respondent contends that claimant's prior bronchitis problems and her continued smoking were the cause of her current pulmonary illness and not her work. Respondent points to the testimony of Steven Lee Nuss, personnel and risk control manager for the respondent, who identified a test report of air samples he collected from claimant's work area. The tests were conducted by the respondent's workers compensation insurance carrier. The test report results indicated that there was minimal dust exposure and the concentration of the dust would likely not pose a hazard.

The Administrative Law Judge found claimant entitled to medical care for her pulmonary illness, with Dr. Hofer authorized as her treating physician. The Administrative Law Judge also ordered respondent to pay all claimant's medical expenses to date as authorized medical. At the conclusion of the preliminary hearing, the Administrative Law Judge announced that he found pulmonologist Dr. Hofer's opinion persuasive that claimant's asthma was occupationally induced.

The Appeals Board agrees with the Administrative Law Judge and finds for preliminary hearing purposes that claimant's current pulmonary illness has a causal relationship to her working environment while she was employed by the respondent. This

conclusion is supported by the opinion of claimant's treating physician pulmonologist Dr. Hofer.

(2) The Administrative Law Judge granted claimant's preliminary hearing requests for medical treatment and payment of past medical expenses, including mileage, as authorized medical. The Appeals Board has found on numerous previous occasions that it lacks jurisdiction to review issues related to medical compensation. See K.S.A. 44-534a(a)(2), as amended.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore entered on September 10, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Ronald D. Barta, Salina, KS
Vincent A. Burnett, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director